

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: Eng Analyst: Deborah Barrett Bill Number: AB 469
Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: February 24, 2009
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Revise Income Tax Forms And Instructions To Enable A Person To Report & Pay Qualified Use Taxes

SUMMARY

This bill would replace the current option for a taxpayer to report use tax on the state income tax return with a requirement to report use tax.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to improve voluntary compliance with state use tax laws.

EFFECTIVE/OPERATIVE DATE

If enacted in the first year of the two year session, this bill would be effective January 1, 2010, and would be specifically operative for returns filed with tax years beginning on or after January 1, 2010.

POSITION

Pending.

ANALYSISSTATE LAW

California use tax is imposed on any person who purchases tangible personal property for use, consumption, or storage in this state where the purchase is not subject to California sales tax. Generally, use tax is applied in instances where the sale is not made in California, but the property is purchased for use in California, such as purchases shipped from out-of-state retailers to a California consumer. The state use tax rate is the same as the sales tax rate. The State Board of Equalization (BOE) is responsible for collecting sales and use tax. Taxpayers may elect to report and pay state use tax on their state income or franchise tax return or file a use tax return directly with BOE.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <input checked="" type="checkbox"/> PENDING

Department Director

Date

Selvi Stanislaus

04/10/09

THIS BILL

This bill would eliminate the election for a taxpayer to report and pay use tax on the state income or franchise tax return and would instead require anyone who must remit use tax and fails to do so, to report and remit the use tax on an acceptable state income tax return.

This bill would define “qualified use tax” to mean either of the following:

- The use tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transactions and Use Tax Law that has not been paid to a retailer holding a seller’s permit or certificate of registration, or
- For individual non-business purchases of less than one thousand dollars (\$1000), the estimated amount of use tax due based on the person’s California taxable income as reflected in the use tax table shown in the accompanying forms and instructions of an acceptable return. If a taxpayer uses this table to calculate their use tax, BOE is precluded from making any determinations of understatements of qualified use tax against that person.

For purchases of \$1000, or more, qualified use tax means the amount of use tax due in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Laws or the Transaction and Use Tax Law.

The bill would provide that qualified use tax does not include use tax imposed on a purchase of cigarettes, tobacco products or both cigarettes and tobacco products for which the purchaser is registered with the BOE as a cigarette consumer or tobacco products consumer, or a cigarette and tobacco products consumer .

This bill would also require Franchise Tax Board (FTB) to make changes to its instruction booklets to enable a person to report and pay use tax in a form and manner approved by the BOE.

The bill’s provisions would be specifically operative for returns filed for taxable years beginning on or after January 1, 2010.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would have minor impact to the department’s programs and operations.

LEGISLATIVE HISTORY

AB 969 (Eng 2007) would have replaced the current option for a taxpayer to report use tax on the state income tax return with a requirement to report use tax. AB 969 was vetoed by Governor Schwarzenegger. The full veto message can be found in Appendix A.

SB 1009 (Alpert, Stats 2003, Ch. 718) added the election for taxpayers to report and pay use tax on their state income tax returns.

FISCAL IMPACT

Changes in the instruction booklets required by this bill could be accomplished during normal annual revisions and would have a minor impact on the department's costs.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

ARGUMENTS/POLICY CONCERNS

Under this bill, administrative functions regarding the use tax would remain divided between FTB and BOE. FTB would process and collect use tax reported on the Personal Income Tax return, while BOE would retain responsibilities for auditing, collecting, and processing claims for refund of the use tax.

LEGISLATIVE STAFF CONTACT

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APPENDIX A

BILL NUMBER: AB 969
VETOED DATE: 10/14/2007

To the Members of the California State Assembly:

I am returning Assembly Bill 969 without my signature.

Although increasing use tax reporting is desirable, I have concerns that the effective date of January 1, 2008 is too soon for taxpayers to compile adequate records of their purchases that are subject to the use tax for calendar year 2007. Further, I would like to see a plan to better educate taxpayers on the use tax, as I suspect that many taxpayers have little knowledge of the tax and may unknowingly fail to pay it.

Sincerely,

Arnold Schwarzenegger